federal register

Monday
June 4, 1979

Part V

Department of the Interior

Bureau of Indian Affairs

Off-Reservation Treaty Fishing; Columbia River Drainage Basin Chinook Salmon Fishery in Idaho

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

Off-Reservation Treaty Fishing; Columbia River Drainage Basin Chinook Salmon Fishery in Idaho

AGENCY: Department of the Interior.

ACTION: Emergency Rule.

SUMMARY: This subpart governs off-reservation fishing for chinook salmon in the waters of the Columbia River drainage basin located in the State of Idaho by members of the Nez Perce Tribe and the Shoshone-Bannock Tribes of the Fort Hall Reservation. After seeking the views of the tribes and the fish and game management agency of the State of Idaho, the Secretary has determined that the spring run of chinook salmon in the Columbia River system is dangerously low and that all fishing for chinook salmon must be banned. These emergency regulations implement that determination. They are promulgated pursuant to the regulatory mechanism established in Subpart A of this part.

DATES: This rule becomes effective at 12:01 a.m. on June 5, 1979. Unless rescinded sooner, this rule expires at the same time on September 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John Hough, Special Assistant to the Secretary of the Interior, U.S. Department of the Interior, 915 2nd Avenue, Room 3292, Seattle, Washington 98174 (206/442-0814).

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian affairs under 43 U.S.C. 1457, 25 U.S.C. 2 and 9, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of federally reserved Indian fishing rights. The Nez Perce Tribe has off-reservation treaty fishing rights in portions of the State of Idaho reserved under the Treaty of June 11, 1855 (12 Stat. 957) and the Treaty of June 9, 1863 (14 Stat. 647), as affirmed in *Sohappy* v. *Smith*, 302 F. Supp. 899 (D. Or. 1969). The Shoshone-Bannock Tribes of the Fort Hall Reservation has off-reservation treaty fishing rights in certain unoccupied lands within the State of Idaho reserved under the Treaty of July 3, 1868 (15 Stat. 673), as affirmed in *State* v. *Tinno*, 94 Ida. 759; 497 P.2d 1386 (1972). Such nonexclusive treaty fishing rights include the right to take chinook salmon in various streams and rivers of the Columbia River drainage basin located in the State of Idaho.

The spring run of chinook salmon in the Columbia River drainage basin is now underway. Due primarily to the drought of 1976–1977 and the extensive salmon catch in the Pacific Ocean fishery, this run indicates that stocks are in a disastrously depressed condition. The U.S. Fish and Wildlife Service has determined that the chinook runs above Bonneville Dam and Lower Granite Dam are the lowest in history, grossly below the minimum conservation escapement levels. If the spring run chinook salmon stock is to survive, every available fish is needed for spawning, and no harvest of any kind can be tolerated.

Given these facts, the Secretary has determined that off-reservation treaty fishing for chinook salmon must be closed altogether to assure conservation and prevent further deterioration of the fishery. The Department has consulted with the fishery officials of the State of Idaho, which has closed the fishery under its regulatory control. The Nez Perce and Shoshone-Bannocks have been consulted as well, but these tribes have failed to act to close their fisheries completely.

Faced with this conservation emergency, the failure of the affected tribes to close their fisheries, and the fact that the spring chinook run is already in progress and in imminent peril, the Secretary has determined that the exigencies require the promulgation of this rule as an emergency rule effective immediately, and that formal advance notice and public comment procedures are impracticable and contrary to the public interest. These regulations are therefore effective at 12:01 a.m. on June 5, 1979.

It has been concluded by the Secretary that the delay caused by full compliance with the National Environmental Policy Act of 1969 would violate the Secretary's duty, under the statutory and regulatory authority cited and the general trust responsibility, to preserve the fishery resource. Accordingly, pursuant to the Council on Environmental Quality's emergency regulations, 40 CFR § 1506.11, no environmental impact statement will be done prior to publication of these emergency regulations. The Secretary has, however, directed that expeditious preparation of an environmental assessment begin immediately.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Comments from the affected tribes and other interested persons are invited at the address indicated above and will be considered with respect to the amendment or revocation of this subpart.

The primary author of this document is: James Jannetta, Attorney Advisor, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, Washington, D.C. 20240 (202/343-6967).

Dated: June 1, 1979.

Cecil D. Andrus,

Secretary.

Part 256 of Chapter 1 of Title 25 CFR is amended by adding the following Subpart C.

Subpart C—Columbia River Drainage Basin Chinook Salmon Fishery in Idaho.

Sec.
256.22 Purpose of this subpart
256.23 Application
256.24 Fishery closure
256.25 Term of regulation
256.26 Emergency regulations
256.27 Other laws and regulations

Authority: The provisions of Subpart C are issued under the authority of 25 U.S.C. 2, 9; 43 U.S.C. 1457; the reorganization plan No. 3 of 1950 (64 Stat. 1262), and 25 CFR 256, Subpart A.

Subpart C—Columbia River Drainage Basin Chinook Salmon Fishery in Idaho

§ 256.22 Purpose of this subpart.

The purpose of these regulations is to assure the conservation of the spring run chinook salmon resource in the waters of the Columbia River drainage basin in the State of Idaho for the present and future use and enjoyment of the Indians with treaty fishing rights therein and other persons entitled thereto, and to prevent the deterioration of this fishery resource. This subpart is promulgated pursuant to Subpart A and is subject to the provisions contained therein.

§ 256.23 Application.

This subpart governs off-reservation fishing for chinook salmon in the waters of the Columbia River drainage basin located in the State of Idaho by members of the Nez Perce Tribe of Idaho and the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

§ 256.24 Fishery closure.

No member of the Nez Perce Tribe of Idaho or the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho, may fish for or catch chinook salmon by any means whatever for any purpose whatever in any and all off-reservation waters of the Columbia River drainage basin located within the State of Idaho.

§ 256.25 Term of regulation.

This regulation is effective beginning June 5, 1979, and expires on September 15, 1979.

§ 256.26 Emergency regulations.

The Area Manager of the U.S. Fish and Wildlife Service in Boise, Idaho, is authorized to make emergency changes in these regulations, including closures and restrictions or the relaxation thereof when necessary or appropriate to meet conservation or enforcement needs. Emergency regulations are effective upon their issuance or according to their terms and remain effective until modified or rescinded by the Area Manager or terminated by their terms.

§ 256.27 Other laws and regulations.

Nothing in this subpart shall be construed to relieve any Indian from any applicable requirement lawfully imposed by the United States or the State of Idaho, nor does anything herein authorize any Indian to act contrary to any restriction or requirement of applcable tribal law not inconsistent herewith.

[FR Doc. 79-17464 Filed 6-1-79; 12:34 pm]
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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
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Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

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[Corrected at 44 FR 27658, 5-11-79]

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing May 29, 1979

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